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IN THE

Supreme Court of the United States

OCTOBER TERM, 1956

No. 587

THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY,

Petitioner,

—against—

RAYMOND G. CAHILL,

Respondent.

BRIEF ON BEHALF OF RESPONDENT, RAYMOND G. CAHILL, RESPONDENT TO THE PETITION FOR WRIT OF CERTIORARI

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I

Statement

Plaintiff commenced an action under the Federal Employers Liability Act (45 U. S. C. A. Sections 51 to 60, inclusive, as amended) in the United States District Court for the Eastern District of New York on December 15th, 1953 ("Appendix to Appellant's Brief"—hereinafter referred to as "App."—p. 1); which action was transferred to the United States District Court for the District of Connecticut by order dated February 9th, 1954 (App. 1). After a trial before the Honorable Robert P. Anderson and a jury on December 21st, 22nd and 23rd, 1954, a verdict

was rendered in favor of the respondent and a judgment was entered on the verdict against the petitioner in the amount of $90,000.00 and costs, on December 24th, 1954.

Petitioner appealed to the Court of Appeals for the Second Circuit advancing two contentions: "(1) that there was no evidence of negligence on the part of the defendant (petitioner) which contributed to the plaintiff's (respondent's) injuries, and (2) that the Court erred in admitting evidence of other accidents at or near the place of the accident in suit". 224 F. (2) 637 (1955). By a divided vote, the Circuit Court reversed the judgment of the trial Court, the majority opinion holding that there was not sufficient evidence to support the verdict and expressly stating that it did not find it necessary to pass on the alleged error admitting the evidence of prior accidents. 224 F. (2) 637 (1955).

Respondent petitioned this Court for a writ of certiorari. By divided vote, this Court granted the petition and reversed the judgment of the Circuit Court. 350 U. S. 898 (1955).

Petitioner applied to this Court for rehearing pointing out that the evidentiary question had not been decided, but this petition was unanimously denied. 350 U. S. 943 (1956).

By "motion to recall" petitioner again requested this Court that the case be remanded to the Circuit Court for decision on the second ground of appeal originally raised. In a *per curiam* opinion this Court remanded the case to the Circuit Court for further

proceedings, four judges dissenting. 351 U. S. 183 (1956).

In a *per curiam* opinion, the Circuit Court decided the question previously left open, namely, as to whether "the Court erred in admitting evidence of other accidents at or near the place of the accident in suit". The Circuit Court unanimously affirmed the judgment of the trial Court. 236 F. (2) 410 (1956).

II

Argument

1

Petitioner raises no question which warrants the exercise of certiorari jurisdiction by this Court.

Stripped of verbiage, this petition complains of error on the part of the trial Court in the admissibility of evidence, and asks this Court to "correct a plain error committed by the Court below". (Petition, p. 3). Such is not the function of this Court. Certiorari is granted "only in cases that demand adjudication on the basis of importance to the operation of our federal system; importance of the outcome merely to the parties is not enough." *Wilkerson* v. *McCarthy*, 336 U. S. 53, 66-67 (1949).

2

Public policy demands an end to litigation.

Federal judges in the Circuit and District Courts have unanimously agreed that the evidence in question was admissible. Four judges of this Court have expressed a similar opinion. 351 U. S. 183 (1596). Four of the remaining members of this Court have held that the major question raised by the petitioner in the original appeal did not warrant the attention of this Court. 350 U. S. 898 (155). See the dissenting opinion of Mr. Justice Frankfurter in *Schulz* v. *Pennsylvania R. R. Co.*, 350 U. S. 523, 527 (1956) and in *Wilkerson* v. *McCarthy, supra*, 336 U. S. 53, 64 (1949). See also Frankfurter and Landis, The Business of the Supreme Court (1927) 206 et seq.

Moreover, petitioner having already occupied the attention of this Court to an unprecedented extent, considers now the bringing of mandamus proceedings (Petition, p. 2). What other steps petitioner may contemplate is unpredictable. The record here indicates, that at the very least, a petition for rehearing, and then a motion to recall, will follow.

This Court has held that "Public policy dictates that there be an end of litigation; that those who have contested an issue shall be bound by the result of the contest, and that matters once tried shall be forever settled as between the parties." *Baldwin* v. *Iowa State Travelling Men's Assoc.*, 285 U. S. 522, 525 (1931).

Certainly, respondent is not unreasonable in now requesting that some restraint be placed upon these seemingly unending proceedings.

WHEREFORE, respondent respectfully prays that the petition for certiorari be in all respects denied and that this Court give consideration to the application of Rule 56.

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